IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 488 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any OrdeJJJJ : NO

JJJJJ

advocate Shri S.J. Shah appearing for the respondent.

2. The petitioner has challenged the validity of award dated 5.10.2000 passed in Ref. (ITC) No. 17/99 by Industrial Tribunal (Central) No. 3, Baroda. By virtue of the impugned award, the punishment imposed upon the respondent, whereby the respondent was dismissed, has been reduced and it has been directed that the respondent should be reinstated in service with 65% backwages and the punishment has been reduced to stoppage of one increment for one year without future effect.

3. As the respondent workman was found to be absolutely irregular in performance of his duties and as he used to remain absent without giving any prior intimation to the employer, in pursuance of ONGC Leave Regulation No. 14(5), the respondent was dismissed by an order dated 3.3.1997. In the circumstances, the respondent raised a grievance and, ultimately, the matter was referred to the Industrial Tribunal.

4. After hearing the concerned advocates and upon perusal of the record, the Industrial Tribunal was pleased to set aside the order of dismissal and was pleased to direct the petitioner to reinstate the respondent with 65% backwages and with continuity of service. The punishment of dismissal was modified and it was directed that punishment of stoppage of one increment without future effect should be imposed upon the respondent.

5. Learned Advocate Shri Mehta appearing for the petitioner-employer has submitted that the Industrial Tribunal ought not to have exercised its powers under the provisions of sec. 11-A of the Industrial Disputes Act, 1947 in the instant case. Looking to the facts of the case, it was amply clear that the respondent was absolutely irregular and had remained absent on several occasions for considerably long period. In the circumstances, even if some mercy had been shown by the Tribunal while setting aside the order of dismissal, the Tribunal ought not to have awarded 65% backwages to the respondent. According to him, such an action on the part of the Tribunal or any judicial forum would encourage absenteeism and indiscipline in the institution.

6. On the other hand, learned advocate Shri Shah has submitted that for compelling reasons the respondent could not remain present and even could not inform the employer with regard to his absence. It has been submitted by him that looking to the ill-health of the

respondent some sympathy should have been shown to the respondent and therefore the Tribunal had rightly directed reinstatement of the respondent with 65% backwages.

7. I have heard the learned advocates and have also perused the impugned award. Upon perusal of the award and noting the facts of the case, it is very clear that the respondent had remained absent without any sanctioned leave. He never gave any intimation with regard to his absence to the petitioner-employer. The respondent was working as an Assistant Technician, Production. It cannot be in dispute that on account of unauthorised absence of a technical person, work of the employer is bound to be adversely affected. In the circumstances, I do not see any justifiable reason for reinstatement of the respondent with 65% backwages. Reinstatement with backwages would surely adversely affect discipline amongst other workmen. In my opinion, ends of justice would be served if the respondent is directed to be reinstated in service, but without backwages. The punishment of stoppage of one increment without future effect is not disturbed.

8. The impugned award is modified to the effect that the respondent should be reinstated in service without backwages and with continuity of service. His one increment should be stopped without future effect. The respondent should be reinstated within 10 days from today.

Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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